

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAY E. POWELL

Claimant

VS.

CITY OF TOPEKA

Respondent

Self-Insured

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Docket No. 199,095

ORDER

Respondent appeals from an April 11, 1995 Preliminary Hearing Order entered by Administrative Law Judge James R. Ward.

ISSUES

The issue to be considered on appeal is whether claimant's injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reading the record and considering the arguments of the parties, the Appeals Board finds:

- (1) The issue raised by respondent in this appeal is one subject to review by the Appeals Board on appeals from preliminary hearings. K.S.A. 44-534a.
- (2) The Appeals Board finds claimant has established accidental injury arising out of and in the course of her employment and therefore affirms the decision of the Administrative Law Judge awarding preliminary benefits.

The essential facts were not in dispute. Claimant works as a registered dietitian for the City of Topeka Health Department. On February 14, 1995 claimant slipped as she stepped off the curb in the parking lot where her car was parked. The parking lot was across the street from the office where claimant worked. Respondent contends this set of facts fit within the "going and coming" rule found in K.S.A. 44-508(f) and, therefore, does not present a compensable claim. As respondent acknowledges, the "going and coming" rule does not apply to injuries which occur on respondent premises. The property in question was not owned by respondent, but was leased by respondent for parking by its

employees. "Premises" is defined by Kansas case law as property within the control of the employer. Respondent contends that the property must be within the "exclusive control" and cites Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994).

The Appeals Board finds that the facts in this case show sufficient control by the respondent employer to make the parking lot where claimant was injured respondent's premises. Respondent entered a lease of the property which gave respondent exclusive right to use of the property for parking by its employees. The lease agreement requires respondent to perform general maintenance of the parking lot, including snow and ice removal. The evidence also establishes that respondent requested its employees to park in this parking lot, reserving the closer parking lot for patients and other visitors. Respondent subsequently subleased some spaces in the lot for use by employees of the Cotton-O'Neil medical group. The Appeals Board, nevertheless, considers the control exercised by respondent to be the type of control anticipated when defining the term premises to include property controlled by the respondent.

The Appeals Board acknowledges that the Kansas Supreme Court does use the term exclusive control in Thompson v. Law Offices of Alan Joseph, *supra*. The decision appears, however, to use that term as a means of distinguishing the facts presented there from other cases where property was considered to be the premises. In the distinguished case the Court indicates the property was under the exclusive control of the respondent and therefore the premises. The decision does not rule out property such as the present which is controlled as a result of a lease agreement. The control afforded the respondent in this case includes the control necessary to minimize risks which might cause injury. This control of the property and the requirement for parking by employees convinced the Appeals Board that property should be considered the premises of the employer and the claim, therefore, compensable.

WHEREFORE, the Appeals Board finds that the Preliminary Hearing Order of Administrative Law Judge James R. Ward dated April 11, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS

Larry G. Karns, Topeka, KS
James R. Ward, Administrative Law Judge
David Shuflet, Acting Director